

### **REMARKS**

These remarks are responsive to the Office Action made final dated January 12, 2005 (hereinafter referred to as the "Office Action"), and to the Advisory Action mailed April 11, 2005 (hereinafter referred to as the "Advisory Action"). Claims 1-22 were pending at the time of the last examination. By this amendment, Claims 1-8 and 12-19 are cancelled, and Claims 23-28 are added. Accordingly, Claims 9-11 and 20-28 are presented for further consideration. Previously pending Claims 9-11 and 20-22 are current amended herein.

As an initial matter, Section 5 of the Office Action states that the information disclosure statement filed August 2, 2004 was not considered because the information disclosure statement allegedly did not include a PTO form 1449 form. The undersigned respectfully disagrees with this allegation. A corresponding PTO form 1449 was included with the information disclosure statement correspondence dated August 2, 2004. In support of this, the undersigned provided the evidence disclosed in Exhibit A in Amendment "D". The evidence includes a copy of all of the correspondence filed on August 2, 2004 including the PTO form 1449. Also, the return receipt postcard and corresponding express mail receipt were also provided in Exhibit A of Amendment "D". As can be seen from the return receipt postcard, there is a description of the contents submitted, which is stamped by the Office of Initial Patent Examination (OIPE) of the United States Patent and Trademark Office, and which includes the Express Mail number corresponding to the express mail receipt, having a "Date In" field filled out of August 2, 2004. Accordingly, the undersigned requests consideration of the references placed with the file and submitted on August 2, 2004. In the event that the reference will continue not to be considered, please inform the undersigned so that an appropriate petition may be filed to consider the PTO form 1449 form as being timely filed on August 2, 2004.

The remaining portions of the Office Action rejected Claims 1-8, 12-19 under a variety of 35 U.S.C. 103(a) rejections. The applicants still consider these claims to be patentable over the cited art, and may pursue the cancelled claims in an appropriate divisional patent application. Nevertheless, to advance prosecution on the present patent application, Claims 1-8 and 12-19 are cancelled. Accordingly these rejections are now rendered moot.

Section 13 of the Office Action indicated that Claims 9-11 and 20-22 would be allowable if rewritten in independent form, including all of the limitations of the base claim and any intervening claim. Claim 9 has been so rewritten. Claim 20 has also been rewritten, but with some language removed where not needed to distinguish over the cited art. Claims 10 and 11 are amended to depend from Claim 9, and Claims 21 and 22 are amended to depend from Claim 20. Accordingly, Claims 9-11 and 20-22 are in allowable form.

New Claims 23-25 and 26-28 are similar to Claims 9-11 and 20-22, respectively, except that instead of operating with propagation path variations, these new claims operate with transmission power changing amounts.

Therefore, favorable action is respectfully requested. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 12<sup>th</sup> day of May, 2005.

Respectfully submitted,



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